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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/628,401	08/01/2000	Kenneth Kensey	V1025/20044	5645

7590

01/21/2003

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EXAMINER

WINGOOD, PAMELA LYNN

ART UNIT

PAPER NUMBER

3736

DATE MAILED: 01/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/628,401

Applicant(s)  
Kensey et al.

Examiner  
Pamela Wingood

Art Unit  
3736



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10.21.02
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 3, 7-10, 14, 28-41, 44, 46, 47, 49, 50, and 52-56 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3, 33-36, 49, 50, and 52-56 is/are allowed.
- 6) ☒ Claim(s) 7-10, 14, 28-32, 37-41, 44, 46, and 47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 0, 12, 1: 6) ☐ Other:

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 7-10, 14, 28-32, 37-41, 44, 46 and 47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 is rejected because, the single disclosed step is not being directly related to the disclosed method of reducing endothelial cell dysfunction.

Claim 8 is rejected because the step of minimizing or eliminating smoking is not being directly related to the method of reducing endothelial cell dysfunction.

Claim 9 is rejected because, the step of minimizing or eliminating the ingestion of caffeine is not being directly related to the method of reducing endothelial cell dysfunction.

Claim 10 is rejected because the step of ingesting alcohol is not being directly related to the method of reducing endothelial cell dysfunction.

Claim 14 is rejected because the step of administering fish oil is not being directly related to the method of reducing endothelial cell dysfunction.

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Claim 28 is rejected because the correlation step is not directly related to the method of shear estimation.

Claims 37-41 are rejected because the disclosed structure alone could not automatically determine the surface tension of the circulating blood.

Claim 44 is rejected because the plurality of disclosed tubes is not related to the determination of the deformability of red blood cells circulating in a being.

Claim 46 is rejected because the disclosed structure is not sufficient to determine the deformability of red blood cells.

Claim 47 is rejected because the deformability of the red blood cells is not related to the color determination or tubular structure.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Egberg et al.

Egberg et al. discloses at Col. 3, lns.20-26, that fish oil has a positive effect on reducing blood clots and at col. 15, lns. Further indicates that marine oil reduces blood viscosity.

5. Claim 28 is rejected under 35 U.S.C. 102(b) as being anticipated by Kron.

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Kron discloses a method and apparatus for measuring blood shear stresses in an infinite number of flow conditions (Col. 1, lns. 50-52), by relating the viscosity of the pressure (Clm. 1).

***Allowable Subject Matter***

6. Claims 3, 33-36, 49-50 and 52-56 are allowed.

***Allowable Subject Matter***

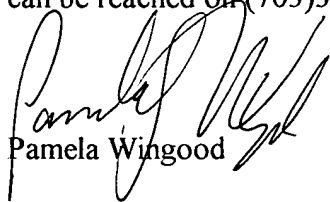
7. Claims 7-10, 14, 29-32, 37-41, 44 and 46-47 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

NOTE: Applicant is encouraged to resend the Printed publications so that the Examiner may consider them. Further, some of the references were not considered because of the date.

***Response to Arguments***

8. Examiner has raised new grounds of rejection and the Applicant is encouraged to respond.

Any further questions regarding this application can be addressed to Pamela Wingood who can be reached on (703)308-2676.



Pamela Wingood


Patent Examiner

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January 12, 2003.

  
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SUPERVISORY PATENT EXAMINER  
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